

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. **CV 18-8087-AG (KK)**

Date: January 8, 2019

Title: ***Michael Malach v. Nancy A. Berryhill***

Present: The Honorable **KENLY KIYA KATO, UNITED STATES MAGISTRATE JUDGE**

DEB TAYLOR

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: (In Chambers) Order to Show Cause Why Action Should Not Be Dismissed  
For Failure to Prosecute and Comply With Court Orders**

**I.**  
**BACKGROUND**

On September 18, 2018, Plaintiff Curtis Atkins (“Plaintiff”) filed a Complaint challenging the decision of the Commissioner of Social Security pursuant to Section 205(g) of the Social Security Act, as amended (42 U.S.C. § 405(g)) and 28 U.S.C. § 1361. ECF Docket No. (“Dkt.”) 1.

On September 20, 2018, the Court issued a Case Management Order (“CMO”) instructing Plaintiff to “promptly serve the summons and complaint on the Commissioner,” and to “file a proof of service” within ninety-seven (97) days of the filing of the Complaint, i.e. no later than December 24, 2018. Dkt. 7 at 1-2. The CMO warned Plaintiff that failure to follow those instructions “may result in dismissal of this case.” *Id.* at 2.

As of the date of this Order, Plaintiff still has not filed a proof of service, per the Court’s CMO.

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## **II.** **DISCUSSION**

Under Federal Rule of Civil Procedure 41(b), the Court may dismiss an action with prejudice for failure to prosecute or failure to comply with any court order. See Fed. R. Civ. P. 41(b).

Here, Plaintiff has failed to file a proof of service of the complaint, and thus failed to comply with the Court's CMO. Consequently, under Rule 41(b), the Court may properly dismiss the instant action with prejudice for failure to prosecute and comply with a court order. However, before dismissing this action, the Court will afford Plaintiff an opportunity to explain his failure to file a proof of service as directed by the CMO.

## **III.** **ORDER**

Accordingly, Plaintiff is **ORDERED TO SHOW CAUSE**, in writing, why this action should not be dismissed for failure to prosecute and/or comply with court orders. Plaintiff shall have up to and including **January 22, 2019**, to respond to this Order. **Plaintiff is cautioned that failure to timely file a response to this Order will be deemed by the Court consent to the dismissal of this action with prejudice.**

**IT IS SO ORDERED.**